

109TH CONGRESS
1ST SESSION

H. R. 1266

To facilitate the reclamation of abandoned hardrock mines, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 2005

Mr. UDALL of Colorado (for himself and Mr. SALAZAR) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To facilitate the reclamation of abandoned hardrock mines,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE, FINDINGS, AND PURPOSE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Abandoned Hardrock Mines Reclamation Facilitation
6 Act”.

7 (b) FINDINGS.—The Congress finds the following:

8 (1) Through various laws and policies, including
9 the Act of May 10, 1872 (commonly known as the
10 General Mining Law of 1872; 30 U.S.C. 22 et seq.),

1 the Federal Government has encouraged the develop-
2 ment of gold, silver, and other mineral resources, es-
3 pecially in the western States, and development of
4 these resources has helped create a strong economy
5 and provided needed materials for many critical
6 products and services.

7 (2) However, historically mining activities have
8 occurred in recurrent cycles of “boom” followed by
9 “bust”, with many mines left inactive or abandoned
10 at the end of each cycle.

11 (3) As a result of this history, the United
12 States has been left an unwelcome legacy of inactive
13 or abandoned mines, including thousands of such
14 mines in the western States.

15 (4) Many of these inactive or abandoned mines
16 pose safety hazards to the public, and the drainage
17 and runoff from such mines has damaged thousands
18 of stream miles to the detriment of water quality,
19 particularly in several western States.

20 (5) The environmental cleanup of these inactive
21 or abandoned mines is hampered by the fact that in
22 many cases, a responsible party for the mine site
23 cannot be identified or lacks the economic resources
24 to respond to the adverse environmental effects of a
25 site, while other parties have been reluctant to un-

(6) It is in the national interest to facilitate the cleanup of inactive or abandoned mines through appropriate legislation that reduces this obstacle.

(d) SCOPE.—Nothing in this Act is intended to facilitate new mining activities or any reduction in liability associated with any current or new mining or processing activities.

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

“(1) DEFINITIONS.—In this subsection, the following definitions apply:

1 “(A) IDENTIFIABLE OWNER OR OPER-
2 ATOR.—The term ‘identifiable owner or oper-
3 ator’ means a person or entity—

4 “(i) that is the current owner or oper-
5 ator or that is or was responsible for the
6 activities at abandoned or inactive mined
7 land that created conditions that cause or
8 contribute to the discharge of pollutants
9 from the abandoned or inactive mined
10 land; and

11 “(ii) that is financially capable of
12 compliance with requirements of this sec-
13 tion and sections 301 and 302.

14 “(B) PERMIT.—The term ‘permit’ means
15 an abandoned or inactive mined land waste re-
16 mediation permit described under paragraph
17 (2).

18 “(C) REMEDIATING PARTY.—The term ‘re-
19 mediating party’ means—

20 “(i) the United States, except with re-
21 spect to abandoned or inactive mined land
22 located on Federal land;

23 “(ii) a State or political subdivision
24 thereof; or

25 “(iii) an Indian tribe.

1 “(D) COOPERATING PARTY.—The term
2 ‘cooperating party’ means any person or entity,
3 including the Federal Government with respect
4 to abandoned or inactive mined land located on
5 non-Federal land, that implements the practices
6 described in paragraph (3)(B)(viii).

7 “(2) PERMITS.—

8 “(A) IN GENERAL.—The Administrator,
9 with the concurrence of the State in which an
10 abandoned or inactive mine remediation project
11 is proposed or the Indian tribe which owns or
12 has jurisdiction over the land on which a reme-
13 diation project is proposed, may issue an aban-
14 doned or inactive mined land waste remediation
15 permit to a remediating party for discharges as-
16 sociated with remediation activity at any eligible
17 area under this subsection, that modifies the
18 otherwise applicable requirements of any other
19 subsection of this section and of sections 301
20 and 302.

21 “(B) DELEGATION.—The Administrator
22 may delegate the authority for issuance of
23 abandoned or inactive mined land waste rec-
24 lamation permits for discharges associated with
25 remediation activities at any eligible area under

1 this subsection to a State that is exercising del-
2 egated authority under this section.

3 “(3) PERMIT PROCESS.—

4 “(A) SCOPE.—A remediating party may
5 apply for a permit for remediation activities at
6 abandoned or inactive mined land from which
7 there is or may be a discharge of pollutants to
8 waters of the United States.

9 “(B) REMEDIATION PLAN.—A remediating
10 party that seeks a permit shall submit an appli-
11 cation for the permit that includes a remedi-
12 ation plan that—

13 “(i) identifies the remediating party
14 and any cooperating party with respect to
15 the plan;

16 “(ii) identifies the abandoned or inac-
17 tive mined land addressed by the plan, in-
18 cluding a verification that the land is eligi-
19 ble under this Act;

20 “(iii) identifies the waters of the
21 United States affected by past mining ac-
22 tivities at the abandoned or inactive mined
23 land;

24 “(iv) describes the baseline condition
25 of the waters at the time of the permit ap-

1 plication (including the nature and extent
2 of any adverse water quality impact and,
3 as applicable, the levels of any pollutant
4 causing the impact);

5 “(v) describes the conditions at the
6 abandoned or inactive mined land that are
7 causing adverse water quality impacts;

8 “(vi) describes the applicant’s reason-
9 able efforts to identify—

10 “(I) current owners, lessees, and
11 claimants of the abandoned or inactive
12 mined land addressed by the plan;
13 and

14 “(II) other persons, including
15 mine operators, if any, whose activi-
16 ties at the abandoned or inactive
17 mined land after October 18, 1972,
18 created conditions that cause or con-
19 tribute to the discharge of pollutants
20 from the abandoned or inactive mined
21 land;

22 “(vii) describes the remediation goals
23 and objectives, including the pollutant or
24 pollutants to be addressed by the plan, in-
25 cluding actions taken to meet the applica-

1 ble water quality standards to the max-
2 imum extent practicable, but in no cir-
3 cumstances worse than the baseline water
4 condition as described pursuant to clause
5 (iv);

6 “(viii) describes the practices, includ-
7 ing a schedule and estimated completion
8 date for implementing the practices, that
9 are proposed to meet the applicable water
10 quality standards to the maximum extent
11 practicable, but in no circumstances worse
12 than the baseline water quality as deter-
13 mined under clause (iv), including—

14 “(I) in the case of a new remedi-
15 ation project, the preliminary system
16 design and construction, operation,
17 and maintenance plans; and

18 “(II) in the case of an existing
19 remediation project, available system
20 design and construction, operation,
21 and maintenance plans and any
22 planned improvements to the projects;

23 “(ix) explains how the practices de-
24 scribed in clause (viii) are expected to re-
25 sult in the attainment of applicable water

1 quality standards to the maximum extent
2 practicable, but in no circumstances worse
3 than the baseline water quality as deter-
4 mined under clause (iv);

5 “(x) describes the monitoring or other
6 forms of assessment that will be under-
7 taken to evaluate the success of the prac-
8 tices during and after implementation, rel-
9 ative to baseline conditions;

10 “(xi) describes contingency plans, in-
11 cluding the practices to be implemented to
12 achieve the remediation goals and objec-
13 tives described in clause (vii), for respond-
14 ing to unplanned adverse events;

15 “(xii) provides a schedule for periodic
16 reporting on progress in implementing the
17 plan;

18 “(xiii) provides a budget for the plan
19 and identifies the funding sources that will
20 support the implementation of the plan, in-
21 cluding practices described in clauses (viii),
22 (x), and (xi);

23 “(xiv) describes the applicant’s legal
24 authority to enter and conduct activities at

1 the abandoned or inactive mined land ad-
2 dressed by the plan;

3 “(xv) demonstrates that there is a
4 covenant obligating future landowners to
5 operate and maintain the property so that
6 all environmental benefits of the project
7 authorized by the permit will be fully real-
8 ized;

9 “(xvi) contains any other additional
10 information requested by the Adminis-
11 trator to clarify the plan and the activities
12 covered by the plan; and

13 “(xvii) is signed by the applicant.

14 “(C) REVIEW OF APPLICATION.—

15 “(i) The Administrator or the dele-
16 gated State shall—

17 “(I) review each application for
18 an abandoned or inactive mined land
19 waste remediation permit;

20 “(II) provide to the public notice
21 of and reasonable opportunity to com-
22 ment on the application;

23 “(III) provide an opportunity for
24 a public hearing on the application;
25 and

1 “(IV) determine whether the ap-
2 plication meets the requirements of
3 subparagraph (B).

4 “(ii) If the Administrator or the dele-
5 gated State determines that an application
6 does not meet the requirements of sub-
7 paragraph (B), the Administrator or the
8 delegated State shall—

9 “(I) notify the applicant that the
10 application is disapproved and explain
11 the reasons for the disapproval; and

12 “(II) allow the applicant to sub-
13 mit a revised application.

14 “(iii) If the Administrator or the dele-
15 gated State determines that an application
16 meets the requirements of subparagraph
17 (B), the Administrator or the delegated
18 State shall notify the applicant that the
19 application is accepted.

20 “(D) ISSUANCE.—

21 “(i) After notice and opportunity for
22 public comment on a permit proposed to be
23 issued, including any additional require-
24 ments that the Administrator or the dele-
25 gated State determines would facilitate im-

1 plementation of this subsection, the Ad-
2 ministrator or the delegated State may
3 issue an abandoned or inactive mined land
4 waste remediation permit to the applicant
5 if the Administrator or the delegated State
6 determines that—

7 “(I) relative to the resources
8 available to the remediating party for
9 the proposed remediation activity, the
10 remediating party has made a reason-
11 able effort to identify persons under
12 subparagraph (B)(vi);

13 “(II) no identifiable owner or op-
14 erator exists, except a permit can be
15 issued on Federal land where the only
16 identifiable owner or operator is the
17 Federal Government; and

18 “(III) the remediation plan dem-
19 onstrates with reasonable certainty
20 that the implementation of the plan
21 will meet applicable water quality
22 standards to the maximum extent
23 practicable, but in no circumstances
24 worse than the baseline water condi-
25 tion as described pursuant to subpara-

1 graph (B)(iv), taking into consider-
2 ation the resources available to the re-
3 mediating party for the proposed re-
4 mediation activity.

5 “(ii) If the Administrator or the dele-
6 gated State decides not to issue an aban-
7 doned or inactive mined land waste remedi-
8 ation permit to the applicant, the Adminis-
9 trator shall notify the applicant of the rea-
10 sons for not issuing the permit.

11 “(E) MODIFICATION.—

12 “(i) Not later than 120 days after the
13 receipt of a written request by a permittee,
14 the Administrator or the delegated State
15 shall approve or disapprove a modification
16 of a permit.

17 “(ii) A permit modification approved
18 by the Administrator or the delegated
19 State under this subsection shall be—

20 “(I) by agreement of the per-
21 mittee and the Administrator or the
22 delegated State;

23 “(II) after providing the public
24 notice of, and opportunity for com-

1 ment and a hearing on, a proposed
2 modification of a permit;

3 “(III) in accordance with the
4 standards in subparagraph
5 (D)(i)(III); and

6 “(IV) immediately reflected in
7 and applicable to the remediation per-
8 mit.

9 “(4) CONTENTS OF PERMIT.—

10 “(A) IN GENERAL.—A permit—

11 “(i) shall include a remediation plan
12 approved by the Administrator or the dele-
13 gated State and any additional require-
14 ments that the Administrator or the dele-
15 gated State establishes under paragraph
16 (9); and

17 “(ii) shall provide for compliance with
18 and implementation of the remediation
19 plan and any other requirements described
20 under clause (i).

21 “(B) REVIEW.—A permit shall establish a
22 schedule for review, by the Administrator or the
23 delegated State, of compliance with the condi-
24 tions and limitations of the permit. The Admin-
25 istration or the delegated State shall inspect

1 each site subject to a remediation permit at
2 least annually.

3 “(C) COMPLIANCE WITH OTHER LIMITA-
4 TIONS.—A permit shall require the remediating
5 party to comply with any applicable provisions
6 of this subsection and other subsections of this
7 section and with sections 301 or 302 to the
8 maximum extent practicable in a manner speci-
9 fied in the permit.

10 “(5) FAILURE TO COMPLY.—Failure of a reme-
11 diating party operating under an approved permit to
12 comply with any condition or limit of the permit re-
13 lated to water quality shall be considered a violation
14 subject to enforcement pursuant to sections 309 and
15 505 of this Act.

16 “(6) TERMINATION.—

17 “(A) IN GENERAL.—The Administrator or
18 the delegated State shall terminate a permit
19 if—

20 “(i) the remediating party successfully
21 completes the implementation of the reme-
22 diation plan; or

23 “(ii) the discharges covered by the
24 permit—

1 “(I) become subject to a permit
2 issued under the other subsections of
3 this section for development that is
4 not part of the implementation of the
5 remediation plan; and

6 “(II) the remediating party seek-
7 ing termination of coverage, and any
8 party cooperating with the remedi-
9 ating party with respect to the plan,
10 is not a participant in the develop-
11 ment.

12 “(B) UNFORESEEN CONDITION.—The Ad-
13 ministrator or the delegated State shall termi-
14 nate a permit if—

15 “(i) an event or condition is encoun-
16 tered that was not contemplated or de-
17 signed for by the remediation plan and is
18 beyond the control of the remediating
19 party; and

20 “(ii) the Administrator or the dele-
21 gated State determines that remediation
22 activities under the permit have resulted in
23 surface water quality conditions, taken as
24 a whole and with reference to the des-
25 ignated uses of the waters, that are not

1 worse than the baseline water condition as
2 described pursuant to paragraph
3 (3)(B)(iv).

4 “(C) NO ENFORCEMENT LIABILITY.—

5 “(i) Subject to clause (ii), if a permit
6 is terminated under subparagraph (A) or
7 (B), the remediating party, or a cooper-
8 ating party with respect to the plan, shall
9 not be subject to enforcement under sec-
10 tion 309 or 505 for any remaining dis-
11 charges from the abandoned or inactive
12 mined land described in the permit.

13 “(ii) This subparagraph does not limit
14 any liability of any person, other than the
15 remediating party or a cooperating party.

16 “(7) LIMITATIONS.—

17 “(A) EMERGENCY POWERS.—Nothing in
18 this subsection limits the authority of the Ad-
19 ministrator under section 504.

20 “(B) PRIOR VIOLATIONS.—

21 “(i) Nothing in this subsection pre-
22 cludes actions under section 309 or 505 or
23 affects the relief available in actions under
24 those sections, with respect to violations of
25 this section, or sections 301(a) or 302,

1 that occurred prior to the issuance of a
2 permit under this subsection.

3 “(ii) If a permit covers remediation
4 activities implemented by the permit holder
5 prior to the issuance of the permit, clause
6 (i) shall not apply to an action that is
7 based on conditions resulting from those
8 remediation activities.

9 “(C) OBLIGATION OF STATES AND INDIAN
10 TRIBES.—Except as expressly provided, nothing
11 in this subsection limits any obligation of a
12 State or Indian tribe under section 303.

13 “(D) OTHER DEVELOPMENT.—Any devel-
14 opment of abandoned or inactive mined land
15 (including mineral exploration, processing,
16 beneficiation, or mining), including development
17 by a remediating party or any cooperating
18 party with respect to the plan, not specifically
19 described in a permit issued by the Adminis-
20 trator or the delegated State under this sub-
21 section shall be subject to this Act (other than
22 this subsection). The commingling of any other
23 discharges or waters with the discharges or wa-
24 ters subject to the remediation permit cannot

1 limit or reduce the liability of persons associ-
2 ated with the other waters or discharges.

3 “(E) RECOVERABLE VALUE.—A remedi-
4 ating party may sell or use materials recovered
5 during the implementation of the plan, but the
6 proceeds of any such sale must be used to de-
7 fray the costs of remediation of the site ad-
8 dressed in the permit or the costs of remedi-
9 ation of other abandoned or inactive sites used
10 for mining hardrock minerals.

11 “(F) STATE CERTIFICATION.—In so far as
12 this subsection may relate to water quality
13 standards, section 401 certification shall not
14 apply to permits under this section; except that,
15 in any case in which section 401 certification
16 would otherwise be required, no permit shall be
17 issued under this subsection without the con-
18 currence of the State in which the discharge is
19 located.

20 “(8) LIABILITY OF OTHER PARTIES.—Nothing
21 in this subsection, including any result caused by
22 any action taken by the remediating party or a co-
23 operating party, limits the liability of any person
24 other than the remediating party or a cooperating
25 party, under this Act or any other law.

1 “(9) REGULATIONS.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), not later than 1 year after
4 the date of enactment of this subsection, the
5 Administrator, in consultation with Secretary of
6 the Interior and the Secretary of Agriculture
7 and State, tribal, and local officials and after
8 providing the public with notice of, and oppor-
9 tunity for comment and a hearing on, regula-
10 tions proposed to be promulgated, shall promul-
11 gate regulations establishing generally applica-
12 ble requirements for—

13 “(i) remediation plans described in
14 paragraph (3)(B); and

15 “(ii) as considered to be necessary by
16 the Administrator, other paragraphs of
17 this subsection.

18 “(B) SPECIFIC REQUIREMENTS BEFORE
19 PROMULGATION OF REGULATIONS.—Before pro-
20 mulgation of regulation pursuant to subpara-
21 graph (A), the Administrator may establish, on
22 a case-by-case basis, after notice and oppor-
23 tunity for public comment, specific require-
24 ments that the Administrator determines would
25 facilitate implementation of this subsection in

1 an individual permit issued to the remediating
2 party.

3 “(10) FUNDING.—

4 “(A) ELIGIBILITY FOR SECTION 319
5 GRANTS.—Implementation of a remediation
6 plan under a permit issued under this sub-
7 section shall be eligible for grants under section
8 319(h).

9 “(B) OTHER GRANT FOR IMPLEMENTA-
10 TION OF REMEDIATION PLANS.—Subject to the
11 availability of appropriated funds, the Adminis-
12 trator also may make a grant, without regard
13 to any requirements in section 319(h) con-
14 cerning the availability of State or other match-
15 ing funds, to any remediating party for imple-
16 mentation of a remediation plan under a permit
17 issued under this subsection.

18 “(11) REPORT.—

19 “(A) IN GENERAL.—Not later than 1 year
20 before the date of the termination of permitting
21 authority specified in paragraph (12), the Ad-
22 ministrator shall submit to Congress a report
23 on the activities authorized by this subsection.

24 “(B) CONTENTS.—The report required
25 under subparagraph (A), at a minimum, shall—

1 “(i) identify each permit, and associ-
2 ated remediating party, issued under this
3 subsection;

4 “(ii) identify the abandoned or inac-
5 tive mine land addressed by each permit
6 (including the waterbodies and baseline
7 water quality of the waterbodies affected
8 by the land);

9 “(iii) summarize the remediation plan
10 associated with each permit issued under
11 this subsection, including—

12 “(I) the goals and objectives of
13 the plan;

14 “(II) the plan budget; and

15 “(III) the practices to be em-
16 ployed according to the plan to re-
17 duce, control, mitigate, or eliminate
18 adverse water quality impacts;

19 “(iv) identify the status of the
20 implementation of each remediation
21 plan associated with each permit
22 issued under this subsection (includ-
23 ing specific progress that permitted
24 remediation activities have made to-

1 ward achieving the goals and objec-
2 tives of the remediation plan);

3 “(v) identify and describe any en-
4 forcement action taken by the Admin-
5 istrator or any civil action brought by
6 a citizen concerning a permit issued
7 under this section (including the dis-
8 position of the legal action); and

9 “(vi) include recommendations by
10 the Administrator for any modifica-
11 tions to this subsection, or the regula-
12 tions promulgated under paragraph
13 (9) to implement this subsection, that
14 would facilitate the improvement of
15 water quality through the remediation
16 of abandoned or inactive mined land.

17 “(12) TERMINATION OF PERMITTING AUTHOR-
18 ITY.—The authority granted to the Administrator or
19 the delegated State under this subsection to issue an
20 abandoned or inactive mined land waste remediation
21 permit terminates on the date that is 10 years after
22 the date of enactment of this subsection.

23 “(13) ELIGIBLE AREAS.—

1 “(A) SITES.—Permits under this sub-
2 section shall be issued only for reclamation of
3 lands and waters—

4 “(i) located in States that include
5 lands subject to the general mining laws;

6 “(ii) that were but are no longer ac-
7 tively mined for hardrock minerals (and
8 not in temporary shutdown) as of the date
9 of enactment of this subsection;

10 “(iii) that are not identified for reme-
11 dial action under the Comprehensive Envi-
12 ronmental Response, Compensation, and
13 Liability Act of 1980 (42 U.S.C. 9601 et
14 seq.) and for which there is no identifiable
15 owner or operator for the mine or mine fa-
16 cilities;

17 “(iv) that are not designated for re-
18 medial action pursuant to the Uranium
19 Mill Tailings Radiation Control Act of
20 1978 (42 U.S.C. 7901 et seq.); and

21 “(v) for which no evidence exists that
22 the lands contain minerals which could
23 economically be extracted through the min-
24 ing, reprocessing, or remining of such
25 lands.

1 “(B) DEFINITIONS.—In this paragraph,
2 the following definitions apply:

3 “(i) The term ‘hardrock minerals’
4 means any mineral other than a mineral
5 that would be subject to any of the fol-
6 lowing if located on land subject to the
7 general mining laws:

8 “(I) The Mineral Leasing Act
9 (30 U.S.C. 181 et seq.).

10 “(II) The Geothermal Steam Act
11 of 1970 (30 U.S.C. 100 et seq.).

12 “(III) The Act of July 31, 1947,
13 commonly known as the Materials Act
14 of 1947 (30 U.S.C. 601 et seq.).

15 “(IV) The Mineral Leasing Act
16 for Acquired Lands (30 U.S.C. 351 et
17 seq.).

18 “(ii) The term ‘general mining laws’
19 means those provisions of law that gen-
20 erally comprise chapters 2, 12A, and 16
21 and sections 161 and 162 of title 30,
22 United States Code.”.

○